Recommendations from BSA | The Software Alliance on Digital Measures to Realize a New Form of Capitalism

June 3, 2022

General Comments

BSA | The Software Alliance (**BSA**)[1] appreciates the leadership of the Headquarters for the Promotion of Digital Society (**Headquarters**) in driving digital policies to accelerate Japan's digital transformation, including the proposal to launch a Digital Agency. We are encouraged that the Headquarters recognizes the critical role of digital tools in responding to societal challenges and achieving the vision of a "New Form of Capitalism" that the Administration outlined, presenting various digital measures in the recent "Digital Nippon 2022" proposal (**Proposal**). The Proposal's two pillars — building strong foundation for digital transformation and capturing changes to come, including a shift to Web 3.0 from 2.0 — are important viewpoints to shape effective digital agenda. A policy foundation that facilitates digital transformation while ensuring digital solutions are developed and used responsibly will see the greatest economic growth and can strengthen the stability of a society. BSA and its members are eager to work with the Headquarters to drive digital transformation initiative and look forward to actively collaborating in the future.

BSA is the leading advocate for the global enterprise software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, providing cutting-edge technologies and services that power governments and businesses including cloud computing, data analytics, and artificial intelligence (**AI**). Many of BSA's member companies have made significant investments in Japan, and we are proud that many Japanese organizations and consumers continue to rely on our members' products and services to support Japan's economy. BSA works closely with governments around the world on developing digital policies, and based on these experiences, we provide the observations and recommendations below to support the Headquarters' priorities.

Strengthen Digital Transformation in Government

We welcome the recommendation in 2.2.1. "Strengthening the Conformity Checks to the Digital Principles" under 2.2. "Strengthening Structural Reform of Regulations and Institutions", encouraging the Digital Agency to set three-year intensive reform period starting

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[1]BSA's members include: Adobe, Alteryx, Altium, Amazon Web Services, Atlassian, Autodesk, Bentley Systems, Box, Cisco, CNC/Mastercam, CrowdStrike, Dassault, DocuSign, Dropbox, Graphisoft, IBM, Informatica, Intel, MathWorks, Microsoft, Nikon, Okta, Oracle, Prokon, PTC, Rockwell, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, TriNet, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc..

from FY2022 to check the conformity of the existing laws and regulation with the five Digital Principles[2] which are designed to promote active use of robotics, AI, and other technologies to replace paper-based and human regulatory actions.

We were also encouraged to see the proposal in section 2.3.1. "Interface for the Public" and 2.3.5. "Local Government DX", under 2.3. "Strengthening Government DX" and support the recommendation to review the three-tiered security approach to improve operational efficiencies and encourage the adoption of security solutions better tailored to current technologies and best practices based on "defense in depth" to more effectively advance government operations. We strongly recommend further narrowing the scope and circumstances of when physical separation from the Internet is advised as a viable security measure. Reducing unnecessary instances of physical network separation and instead procuring cloud services that meet appropriate internationally recognized security standards will enable governments to enhance government efficiency and the security of government networks. Security approaches have evolved rapidly reflecting technological advancement, and best security practices have shifted from physical isolation to more risk-based, security outcome-oriented practices such as advanced user ID management, zero trust architectures, and implementation of strong data encryption.

These are positive development, and we support the Headquarters' direction to further facilitate government IT modernization to improve citizen service.

Set Clear Security Enhancement Requirements

While we welcome the above, we also have significant concerns with elements of the Proposal that could prevent government agencies from adopting innovative and best-in-class cloud technologies and services. This includes section 2.3.4. "Cloud Utilization by the Government", which recommends that the Government of Japan (**Government**) adopt "security-enhanced cloud" services in circumstances involving confidentiality class-3 and class-3 equivalent information (e.g. sensitive data related to the Government and citizens within confidentiality class-2 information) and that domestically produced services be actively adopted for "security-enhanced cloud" and monitoring the safety of cloud connectivity and network component (supply chain safety).

We agree that the Government should take a risk-based approach to cloud adoption and that workloads involving confidential information should be subject to heightened security requirements. However, requirements that limit the Government's ability to acquire cloud services based on an objective assessment of security benchmarks will ultimately undermine such a risk-based approach. Effective policies should avoid adopting categorical prohibitions against the acquisition or installation of technologies simply because they are produced domestically. We encourage Headquarters to reconsider the approach in Section 2.3.4. and instead, focus on identifying clear and well-defined risk evaluation criteria that are aligned with internationally recognized standards, best practices, and certification frameworks. For cloud service, these may include recognizing ISO/IEC 27001, 27017 and 27018, and other relevant

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[2] Digital Principles: digital completion and automation; agile governance; public-private partnership; ensuring interoperability; and use of common infrastructure Priority Policy Program Summary (page 12):

https://www.digital.go.jp/assets/contents/node/basic_page/field_ref_resources/5ecac8cc-50f1-4168-b989-2bcaabffe870/20211224_policies_priority_summary.pdf

standards and third-party certifications. The integration of internationally recognized standards and other programs in risk evaluation will enable the Government to access the most innovative products and competitive prices that are implemented securely. We encourage clarifying requirements for enhanced security by referencing internationally recognized standards and designate the cloud services that meet these requirements as "security-enhanced cloud" rather than basing this determination on whether the service is domestic.

The Proposal also refers to the impact of the Clarifying Lawful Overseas Use of Data (**CLOUD)** Act in the United States which could be interpreted as a reason for wanting to ensure that only domestic private cloud services are used. However, it is important to note that the CLOUD Act does not allow unrestricted US government access to data. Instead, the CLOUD Act puts in place a new framework to facilitate the execution of international agreements on information sharing for criminal investigation purposes between the US and other governments.[3] Such agreements will ensure that information of each government's nationals can only be accessed by the other government subject to an agreed-upon set of processes and controls. This enhances the safeguards for government access to information, rather than compromising the security and protection of the information as the Proposal appears to suggest.

Enable Japanese Businesses to Compete Globally

Section 3.2.4. "New Businesses (Next-Generation Industries, Startups)" under 3.2. "Change in Growth Engine" states that as Ministry of Economy, Trade and Industry (**METI**) works to develop criteria for reliable cloud (termed "Quality Cloud"), requirements to appropriately manage confidentiality class-3 information should be specified. It also recommends that "Quality Cloud" should be implemented in a domestically produced cloud environment in domestic data centers, and the cloud connectivity function that operates and manages connections with other cloud environments should also be implemented in a domestically produced cloud environment. As mentioned above, rather than evaluating risk from the perspective of whether or not cloud services are domestically produced, we encourage an approach based on domestic and global standards as well as considering the research and investment made to maintain and add the latest security update features. To foster Japan's digital industry, the Government should actively contribute to internationally recognized standards and promote them to Japanese companies which will enhance their competitiveness in international markets, rather than incentivizing them to design their services to meet country-specific procurement requirements. It is also important to note that global cloud service providers can support local start-ups, serving as a foundation for scaling up this important sector of the economy with low initial costs. To foster a friendly environment for start-ups, we recommend avoiding the suggestion that domestically produced services are necessarily superior in terms of security or other features.

Conclusion

BSA looks forward to working with the Headquarters to support its goal of driving effective digital policies. In addition to sharing this recommendation, we would appreciate the

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[3] "What is the CLOUD Act?" https://www.bsa.org/policy-filings/us-what-is-the-cloud-act

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opportunity for a dialogue to better understand the Proposal's intention and discuss ways we can be of further assist in the effort.